



ANDREW M. CUOMO
Governor

Department of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 12, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Fightlin, M.D.



Richard Fightlin, M.D.



Ian H. Silverman
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Richard Fightlin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.19-049) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[REDACTED]
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

IN THE MATTER : **DETERMINATION**
OF : **AND**
RICHARD FIGHTLIN, M.D. : **ORDER**

X 19-049

A Notice of Hearing and Statement of Charges dated December 14, 2018, were served upon Richard Fightlin, M.D. (Respondent.) A hearing was held on February 14, 2019, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **Mary E. Rappazzo, M.D.**, Chairperson, **Lyon M. Greenberg, M.D.** and **David Irvine, DHSc, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **Dawn MacKillop-Soller**, Administrative Law Judge, served as the administrative officer.

Ian H. Silverman, Associate Counsel for the Bureau of Professional Medical Conduct, appeared for the Department. The Respondent was duly served with the charges and notice of hearing pursuant to PHL § 230(10)(d)(i), but failed to appear. (Exhibits 2-4.) The Hearing Committee received and examined documents from the Department (Exhibits 1-7) and a transcript of the proceeding was made.

The Hearing Committee votes 3-0 to sustain the charges that the Respondent committed professional misconduct as defined in Education (Educ.) Law §§ 6530(9)(d), 6530(9)(b) and 6530(9)(a)(iii) and determined, pursuant to PHL § 230-a, to revoke the Respondent's medical license.

JURISDICTION

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(iii) by having been convicted of a crime under the laws of another jurisdiction, "and which, if committed within this state, would have constituted a crime under New York state law." The Respondent is also charged with professional misconduct pursuant to Educ. Law § 6530(9)(b), "having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state," and Educ. Law § 6530(d), "having (his) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct upon which the finding resulting in disciplinary action against his medical license would, if committed in New York, constitute professional misconduct under the laws of the state of New York. A licensee charged solely with a violation of Educ. Law § 6530(9) is entitled to a hearing, the scope of which is limited to whether there is a relevant conviction or administrative determination and if so, the nature and severity of the penalty to be imposed. PHL § 230(10)(p). Hearing procedures are set forth in Department regulations at 10 NYCRR Part 51. The Department had the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f).

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On April 14, 1970, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 105795. (Exhibit 5.)
2. On February 21, 2017, in the Superior Court of California, County of Tulare, the Respondent was convicted of two counts of misdemeanor battery and was sentenced to 30 days in

jail and three years of probation. He was also assessed \$385 in fines and fees and ordered to complete 14 weeks of an anger management program. (Exhibit 7.)

3. In a Default Decision and Order effective April 25, 2018, the Medical Board of California Department of Consumer Affairs (California Board) revoked the Respondent's medical license based on his criminal convictions and his breach of the standard of care in his medical treatment and record keeping practices involving six patients between November of 2013 and October of 2015. (Exhibit 6.)

DISCUSSION

The Hearing Committee unanimously concluded that the Respondent's conduct resulting in convictions of battery under California law, which would have constituted a crime had it occurred in New York, specifically assault in the third degree under New York Penal Law §120.00, establishes he violated Educ. Law § 6530(9)(a)(iii). Professional misconduct includes:

9. (a) Being convicted of committing an act constituting a crime under...⁽ⁱⁱⁱ⁾the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law; Educ. Law § 6530(9)(a)(iii).

The Hearing Committee also unanimously decided that the treatment the Respondent provided to the patients that are the subject of the California Board's order, had it occurred here, would have constituted professional misconduct as defined in Educ. Law §§ 6530(9)(d) and 6530(9)(b). In the care of a patient at 36 weeks pregnant, the Respondent rushed elective ureteroscopy and laser procedures, followed by stent removal, which resulted in her experiencing a "left ureteral perforation," readmission to the hospital in "septic shock" and "a ureteral stone of 6mm" at the surgical site. (Exhibit 6, p. 11.) Despite a preexisting urine infection, the Respondent moved forward with "ureteroscopy/laser lithotripsy removal" of stent surgeries on a different patient, who became "sick" and suffered a "perforated right ureter." (Exhibit 6, p. 10.) Instead of removing "an approximately three foot long

gauze" from another patient's vaginal area within 24 hours of a "transvaginal tape mid-urethral sling (TVT) procedure with cystoscopy," the Respondent left the surgical packing in place for 11 days, which caused a "vaginal infection." (Exhibit 6, p. 4.) The cases that are the subject of the California Board's order also involved the Respondent failing to document complete surgery details, informed consent discussions, physical evaluations and testing results. (Exhibit 6, p. 4-7, 9, 11.) One of the cases involved the Respondent never advising the patient of his termination of care or producing the patient's medical records. (Exhibit 6, p. 6.)

California and New York require physicians performing surgical procedures to assess patients and perform proper testing to confirm adverse consequences, which providers are expected to promptly address. Both states also obligate physicians to document surgery information, including physical examinations and testing results, and to notify patients when discontinuing a professional relationship, an obligation that extends to medical records, which physicians must retain and make available to patients. *See* 8 NYCRR 29.2(a)(3). The Hearing Committee noted the importance in these requirements is to keep patients undergoing medically invasive surgeries safe and to apprise other providers of important treatment details.

The Respondent's failures, had they occurred in New York, would have constituted negligence on more than one occasion, gross negligence on a particular occasion and a failure to maintain a record of a patient which accurately reflects the evaluation of the patient, as defined in Educ. Law §§ 6530(3), 6530(4) and 6530(32). The Hearing Committee unanimously determined revocation of the Respondent's medical license is appropriate.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct set forth in the Statement of Charges are SUSTAINED.
2. The Respondent's license to practice medicine in New York State is REVOKED.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: Albany, New York
March 8, 2019

[REDACTED]
Mary E. Rappazzo, M.D.
Chairperson

Lyon M. Greenberg, M.D.
David F. Irvine, DHSc, P.A.

TO: Richard Fightlin, M.D.

[REDACTED]

Richard Fightlin, M.D.

[REDACTED]

Ian H. Silverman
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

NEW YORK STATE
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH

IN THE MATTER
OF
RICHARD FIGHTLIN, M.D.

STATEMENT
OF
CHARGES

Richard Fightlin, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 14, 1970 by the issuance of license number 105795 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 26, 2018 the Medical Board of California (hereinafter "California Board") issued a Default Decision and Order revoking the Respondent's medical license. The California Board Order was based upon Respondent's care and treatment of six patients from on about November 7, 2013 through September 9, 2015. The revocation was based upon gross negligence, repeated acts of negligence, failure to maintain adequate medical records and his two criminal convictions to misdemeanor battery.

B. Respondent's conduct as described above, upon which the disciplinary action in California was based would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion);
2. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion); and/or

3. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient)
- C. On or about February 21, 2017 Respondent enter pleas of nolo contendere to two counts of misdemeanor battery in Tulare County Superior Court, State of California. Respondent was sentenced to 30 days in jail, three years of summary probation and ordered to attend a 14 week anger management program and assessed \$385 in fines and fees.
- D. Respondent's criminal conviction as described above in California would, if committed in New York State, have constituted a crime under New York State law, specifically N.Y. Penal Law §120.00 (Assault in the Third Degree, a class A misdemeanor).

SPECIFICATION OF CHARGES
FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or

suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(3), (4) and/or (32)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530(3), (4) and/or (32)) as alleged in the facts of the following:

2. The facts in Paragraphs A and B.

THIRD SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would

have constituted a crime under New York state law (namely N.Y. Penal Law § 120.00
Assault in the Third Degree) as alleged in the facts of the following:

3. The facts in Paragraphs C and D:

DATE: December 14, 2018
Albany, New York

[REDACTED]

TIMOTHY J. MAHAR
Acting Deputy Counsel
Bureau of Professional Medical Conduct